

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 20 May  
**Time:** 09:00 – 17:00h  
**Location:** Athens, Greece  
**Contact:** [max.simonis@esma.europa.eu](mailto:max.simonis@esma.europa.eu) T: +33 1 58 36 59 46

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No Items

#### 1. Confidential items

##### ***VOTING MEMBERS & ADVISORS ONLY***

#### 2. Adoption of agenda *BS/69 decision*

**Decision:** The agenda was adopted.

#### 3. Summary of conclusions of March meeting *BS/60 decision*

**Decision:** The summary of conclusions was approved.

#### 4. Report by Chair and Executive Director *Oral information*

The Chair reported on;

- the recent activities of the Joint Committee and joint activities by the ESAs, in particular the Task Force on securitisation, the upcoming joint Consumer Day and the review of the ESFS;
- the recent activities of the Securities and Markets Stakeholder Group;
- the recent activities of the European Systemic Risk Board, in particular the work on loan origination;
- the meeting of the Economic and Financial Committee that took place on 25 March;
- the meeting with Commissioner Barnier that took place on 7 April in Brussels, in particular the

- discussions on the ESFS review, ESMA's budget and the frontloading requirements under EMIR;
- the informal Ecofin meeting that took place on 1-2 April in Athens, followed the day after by a conference organised by the HCMC and several meetings with stakeholders;
- the recent and upcoming activities by the OTC Derivatives Regulators Group;
- a recent written procedure in the Board where in first instance the quorum was not established and the need for members of the Board of Supervisors to cast their votes by the deadline set;
- the need for everybody involved in ESMA's work to strictly apply the confidentiality requirements;
- the Financial Innovation Day that took place on 8 April in Paris; and
- the current status of ESMA's involvement in IOSCO Committees.

The Board asked ESMA to explore ways to improve the involvement smaller stakeholders in ESMA's work. The Chair indicated to discuss this topic at a future meeting of the Board.

The Executive Director reported on;

- the meeting of the Financial Services Committee that took place in Brussels on 7 May, in particular the discussions on long-term financing, securitisation and the Maystadt report;
- the Level 2 activities on PRIIPs within the Joint Committee and its governance, to be discussed at the July meeting of the Board of Supervisors;
- the activities by the Task Force on technical arrangements for Trade Repositories transaction data access; and
- the recent visit to ESMA by the European Court of Auditors and their upcoming performance audit on the supervision of CRAs.

## 5. MiFID II

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|--|--------------|-------------------|
| – Report by Jean-Paul Servais                | <i>BS/70</i> | <i>discussion</i> |
| – Report by Martin Wheatley & David Lawton   | <i>BS/71</i> | <i>discussion</i> |
| – draft Discussion Paper on MiFID II/MiFIR   | <i>BS/72</i> | <i>decision</i>   |
| – draft Consultation Paper on MiFID II/MiFIR | <i>BS/73</i> | <i>decision</i>   |

Jean-Paul Servais presented the report and the accompanying documents, stressing that the current text represents a balanced compromise reached within the Standing Committee.

The Board discussed the report, in particular;

- the inducements requirements, in particular:
  - the quality enhancement criteria for the acceptance of third party inducements and the possible impact on different business models; and
  - the possibility to also include positive elements or examples of circumstances to be considered by NCAs in determining the condition of quality enhancement;
- the requirements on the safeguarding of client assets, in particular the proposals on intra-group diversification of client funds:
  - to take into account the credit risk of a third-party; and
  - whether diversification should be required when deposit guarantee schemes are already in place;
- to need to include a reference to EBA's consultation in relation to their responsibilities in the area of structured deposits;
- whether pending investigations and enforcement proceedings should be included in the information required about the management body and persons directing the business for the authorisation of investment firms; and
- whether, considering the MiFID II legal text, it is appropriate to consult on the specification of a minimum level of trading activity in a particular instrument before venues are required to report on their execution quality.

Martin Wheatley presented the report and the accompanying documents.

The Board discussed the report, in particular;

- the conditions under which post-trade transparency information deferral can be granted for non-equity financial instruments, in particular:
  - the methodology and the relevant proxies for assessing large in scale thresholds, in particular the modalities in the context of granting a deferral for an indefinite period of time; and
  - the scope of the size specific to the instrument for transactions executed on a trading venue;
- the approach towards market making strategies, market making agreements and market making schemes, in particular the definition of market making and whether firms accessing the market through DEA can be qualified as 'member or participant' of a trading venue;
- the right of CCPs and trading venues to respectively require access to trading venues and CCPs; and
- the timeline of the consultation period.

**Decision:** The Board approved the Discussion Paper and Consultation Paper on MiFID II/MiFIR, including:

- adding a question on the value of positive examples of circumstances to be considered by NCAs in determining the condition of quality enhancement;

- to include a reference to EBA’s consultation in relation to their responsibilities in the area of structured deposits;
- to check with EBA whether the inclusion of pending investigations and enforcement proceedings in the information required about the management body and persons directing the business for the authorisation of investment firms raised any issue in the past;
- to include the element of safety offered by the third party in the proposals on intra-group diversification of client funds;
- to confirm the consultation on the specification of a minimum level of trading activity for the purpose of execution quality reporting while taking note of the concern that proposals on this reporting should be consistent with the MiFID II text;
- amendments to the first option on setting the ‘size specific to the instrument’ deferral so that the calibration of the deferrals can take into account different classes of instruments, paying specific attention to the calibration for sovereign bonds, and to delete the second option;
- to include a question regarding the consequences if an investment firm would have to sign a market making agreement in the case of cross-venue trading; and
- to clarify in the section on market making strategies that firms accessing the market through DEA cannot be qualified as a ‘member or participant’ of a trading venue.

## 6. Post-Trading Standing Committee

- Report by Giuseppe Vegas *BS/74 information*

Giuseppe Vegas presented the report and the accompanying documents.

- EMIR Q&A *Annex 1 decision*

**Decision:** The Board approved the EMIR Q&A.

- Opinion on voting procedures for CCP Colleges under EMIR *Annex 2 decision*

The Board discussed the opinion, in particular;

- the principle that each college member can only have one vote;
- whether EMIR envisages an obligation for college members to express their opinion; and
- how to count abstentions under the different voting procedures.

**Conclusion:** The Chair concluded that the opinion will be revised on the basis of the following elements:

- although there is no legal duty to do so, college members should express their opinion;
- abstentions are counted in the denominator of the majorities referred to in Article 17(4);
- abstentions would not count in the denominator of the majority referred to in Article 19(3); and

- where the central bank of issue of one of the most relevant Union currencies corresponds to more than one central bank and the relevant central banks have determined the single representative who participates in the college, this representative should have one vote. This vote is held on behalf of the central bank of issue and should represent the collective view of the relevant central banks and commit them jointly.

The revised opinion will be circulated within the next days for approval by written procedure with a shortened deadline.

## 7. ESMA Organisation

- Explanatory note on ESMA legal instruments and the Comply or Explain mechanism *BS/75 & decision Annex*

The Head of the Legal, Cooperation and Convergence Unit presented the note.

The Board discussed the note, in particular;

- the policy choice that ESMA should only issue guidelines where both the objectives in Article 16(1) are satisfied cumulatively for each set of guidelines and the different approach taken by EBA and EIOPA;
- the need for guidelines to have a clear basis in underlying provisions of Union law within ESMA's scope of action, particularly in view of ensuring that competent authorities and financial market participants may comply with them;
- the principle that after the application date a notification of intention to comply would be considered as a notification of non-compliance unless regulatory or legislative reforms are underway or the guidelines relate to financial market participants or financial instruments which do not currently exist in the jurisdiction of a competent authority;
- that the category 'not applicable' is also relevant for Guidelines which relate to the exercise of a national discretion but where this national discretion has not been exercised; and
- the need for ESMA to ensure that the compliance reporting by NCAs is consistent (i.e. that similar situations are reported in the same manner in the compliance table).

**Decision:** The Board approved the reference framework for ESMA's legal instruments and the comply or explain mechanism for guidelines subject to minor textual changes. A further discussion on possible follow-up actions after the issuance of guidelines, and in particular the role of the Review Panel, will take place at a future Board meeting.

- Discussion note on cooperation between ESMA and the SSM *BS/76 discussion*

The Executive Director presented the note.

The Board discussed the report, in particular the need to intensify the cooperation with the SSM and whether ESMA should establish a specific task force to deal with this topic.

**Conclusion:** The Board will have a further discussion on the cooperation between ESMA and the SSM at the July meeting. Members were asked to contact the Executive Director for suggestions on the way forward.

## 8. Market Integrity Standing Committee

- Disclosure of the results of the Asset Quality Review exercise *BS/77 discussion*

Kostas Botopoulos presented the report.

The Board discussed the report, in particular;

- the recent developments in the Comprehensive Assessment process and the tentative timeline of communication with banks and the public disclosure of the results;
- the obligation of banks to disclose potential inside information in a timely manner; and
- the need to continue the close cooperation with the ECB.

**Conclusion:** The Chair will send a letter to the ECB clarifying the applicable principles under the Market Abuse Directive and suggesting an approach on the communication with banks and the public disclosure of the results. ESMA staff will stay in close contact with the ECB to cooperate on this topic.

## 9. Credit Rating Agencies Technical Committee

- Report by Verena Ross / CRA 3 Technical Standards *BS/78 & decision Annex*

The Executive Director presented the report, highlighting the main changes to the draft technical standards following the consultation and the recent discussion in the CRA Technical Committee.

The Board discussed the note, in particular the scope of the SFI reporting requirements under Article 8(b) and the phase-in approach for private and bilateral transactions.

**Decision:** The Board endorsed the agreements made within the CRA Technical Committee with regards to the CRA 3 draft Regulatory Technical Standards. The final draft Regulatory Technical Standards will be submitted to the Board for approval by written procedure in early June.

## 10. Progress reports

- Report by Jean Guill (Review Panel) *BS/79 & information Annex*

**Conclusion:** The Board took note of the report.

- Report by Gareth Murphy (IMSC) *BS/80 information*

**Conclusion:** The Board took note of the report.

- Report by Verena Ross (TF on reference rates and other benchmarks-setting processes) *BS/81 information*

**Conclusion:** The Board took note of the report.

**11. A.O.B.**

**12. Future meetings**

- 9 July 2014 (Paris)  
10 July - joint meeting with SMSG (Paris)
- 25 September 2014 (Rome)
- 5 November - joint meeting with the SMSG (Paris)  
6 November 2014 (Paris)
- 17 December 2014 (Paris)

## Participants list

### Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Vladimir Savov (alternate)	
Czech Republic	Pavel Hollmann	Karel Juráš
Denmark	Julie Galbo	Hanne Rae Larsen
Germany	Hannelore Lausch (alternate)	Philipp Sudeck
Estonia	Andre Nõmm	
Ireland	Gareth Murphy (alternate)	Oliver Gilvarry
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Lourdes Centeno (alternate)	Antonio Mas
Croatia	Silvana Bozic (alternate)	
France	Gérard Rameix	Francoise Buisson
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Liana Ioannidou
Latvia	Kristaps Zakulis	
Lithuania	Vilius Sapoka (alternate)	
Luxembourg	Jean Guill	



Hungary	Andras Bethlendi	Richard Vegh
Malta	Marianne Scicluna (alternate)	
Netherlands	Merel van Vroonhoven	Pim de Wild
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Anna Skrzypek
Portugal	Gabriela Figueiredo Dias (alternate)	
Romania	Daniel Daianu	Cristina Dumitrescu
Slovenia	Damjan Zugelj	Sabina Bešter
Slovakia	Slavomir Stastny (alternate)	
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Anna Jegnell (alternate)	Oskar Ode
United Kingdom	Martin Wheatley	Karen Northey

### Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Patrick Pearson	Peter Ohrlander
ESRB	Francesco Mazzaferro	
EIOPA	Manuela Zweimüller	
EBA	Corinne Kaufman	

## Observers

Iceland	Sigurveig Guomundsdottir	
Liechtenstein	Marcel Loetscher	
Norway		

## ESMA

Executive Director	Verena Ross
Summary of Conclusions	Max Simonis
Head of Operations Division	Nicolas Vasse
Head of Markets Division	Rodrigo Buenaventura
Markets Division	Carsten Ostermann
Head of Investment and Reporting Division	Laurent Degabriel
Investment and Reporting Division	Sarah Raisin Salvatore Gnani
Head of Legal, Cooperation and Convergence Unit	Sophie Vuarlot-Dignac

Done at Paris on 9 July 2014

Steven Maijoor  
Chair  
For the Board of Supervisors